



DEPARTMENT OF THE NAVY

OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, DC 20350-1000

SECNAVINST 5720.45B

JAG 13

28 Dec 2005

SECNAV INSTRUCTION 5720.45B

From: Secretary of the Navy

Subj: PUBLICATION OF DEPARTMENT OF THE NAVY (DON) DIRECTIVES AND
OTHER DOCUMENTS AFFECTING THE PUBLIC IN THE FEDERAL
REGISTER

Ref: (a) Title 44 of the U.S. Code, Chapter 15
(b) DOD Directive 5025.1, 14 Jul 04
(c) DOD Administrative Instruction No. 102, Office of the
Secretary of Defense (OSD) Federal Register System,
16 Aug 99
(d) Regulations of the Administrative Committee of the
Federal Register (1 C.F.R. chs. I and II)
(e) 5 U.S. Code, Section 552

1. Purpose. To prescribe the procedures and responsibilities for publishing certain DON directives and documents that affect the public in the Federal Register pursuant to references (a) through (e).

2. Cancellation. SECNAVINST 5720.45A.

3. "Federal Register" Defined. The term "Federal Register" is used in this instruction to include both the daily editions of the publication bearing that title, and the special editions which are published at less frequent intervals. Special editions include a codification of Federal documents entitled, "Code of Federal Regulations," which is revised annually in quarterly increments; the annual compilation of Federal agencies' organizational structures and functions entitled, "United States Government Manual;" the "Weekly Compilation of Presidential Documents;" and the annual compilation entitled, "Public Papers of the Presidents of the United States."

4. Responsibilities

a. DON Activities. The head of each DON activity is responsible for ensuring:

(1) The prompt publication of those directives and other documents, including notices, under their cognizance required to be published in the Federal Register pursuant to the provisions of reference (a).

(2) The full and prompt consideration of petitions of interested persons for the issuance, revision, or cancellation of directives under their cognizance.

b. Legal Counsel. To ensure publication requirements are met, component heads shall ensure that the cognizant judge advocate or General Counsel attorney reviews all directives, instructions, and similar documents before promulgation. Assistance in this regard may be obtained from the Judge Advocate General (Code 13).

c. Judge Advocate General (JAG). The JAG, through his or her designated subordinates, is designated as the DON's Agency Representative in accordance with section 16.1 of reference (d) and shall perform the duties contained in section 16.2 through section 16.4 of reference (d) in fulfilling the following functions with relation to the Office of the Federal Register:

(1) Perform the duties of liaison officer by representing the DON in all matters relating to the submission of documents to the Office of the Federal Register; supervising the selection, review, codification, and editing of such documents; and overseeing departmental compliance with the publication requirements of the Office of the Federal Register; and

(2) Perform the duties of certifying officer by authenticating documents submitted to the Office of the Federal Register.

d. Responsibility for Joint Directives. In the case of an intra-Navy joint directive that is required to be published in the Federal Register, the responsibilities under subparagraph 4a(1) shall be determined by agreement between the components which have cognizance of the directive. If required, the submission of a joint Armed Forces directive for publication in the Federal Register is the responsibility of the appropriate component of the Military Department having primary administrative cognizance for the directive.

5. Publication of Adopted Regulatory Documents for the Guidance of the Public

a. Discussion. In general, subsection (a)(1) of

reference (e) requires that an informative, current description of where, how, and by what authority the DON performs its functions and substantive and procedural rules, policies, and interpretations affecting the public, be published in the Federal Register for public guidance. Section 1505 of reference (a) provides guidance in determining whether a particular document should be published in the Federal Register.

(1) Statutory purposes. The general purposes of subsection (a)(1) of reference (e) are to provide useful information on Federal agency functions which concern the public; to fully apprise members of the public of their rights and opportunities in connection with those functions; and to inform interested persons how to deal effectively with an agency.

(2) Legal effect. Subsection (a)(1) of reference (e) provides that, unless actual and timely notice has been given, a person may not be required to resort to, or be adversely affected by, any matter that is required to be published in the Federal Register unless it has been so published. The requirement of publication of certain documents pursuant to reference (a) operates to give sufficient legal notice of the contents of such document to persons subject to or affected by it. Publication creates a legal presumption that such document was duly issued, prescribed, or promulgated. Courts may take judicial notice of the contents of documents published in the Federal Register.

b. Incorporation By Reference. Pursuant to the provisions of references (d) and (e), and with the approval of the Director of the Federal Register, the requirement for publication in the Federal Register may be satisfied by reference to other documents containing the information that have been published in the Federal Register. In general, matters eligible for incorporation by reference are restricted to materials in the nature of published data, criteria, standards, specifications, techniques, illustrations, or other published information that is reasonably available to members of the class affected.

c. Manner of Publication. Documents published for the guidance of the public under this paragraph shall be prepared and submitted for publication in the Federal Register in the manner prescribed in paragraph 6.

6. Procedures for Publishing in the Federal Register

a. General Requirements. The official having primary responsibility under paragraph 4 for ensuring the publication of a document in the Federal Register shall cause to be transmitted, by

letter, an unsigned original and three copies of the document prepared in the form prescribed by reference (d), a cover letter requesting publication in the Federal Register, a computer diskette containing the electronic version of the document, and such supplemental instructions as the JAG may issue with supporting documentation as required, to the JAG (Code 13) for review, processing, and forwarding to the Office of the Federal Register. Documents issued by Marine Corps activities shall be transmitted via the Commandant of the Marine Corps.

b. Time of Transmittal. In transmitting documents for publication in the Federal Register, allowances should be made for:

(1) Delays of several days, which commonly occur in postal and inter-office mail systems, both while documents are en route to the Office of the Judge Advocate General (OJAG) and while they are en route to the Office of the Federal Register;

(2) Reasonable processing time in the OJAG, normally five working days; and

(3) The normal four working days processing time in the Office of the Federal Register. See section 17.2 of reference (d).

(4) As a general rule, a document that is required to be published in the Federal Register by a specified date or a specified time before an event should be transmitted to the JAG (Code 13) at least two weeks before the required publication date. If this cannot be done, the document should be hand delivered to the JAG (Code 13) at the earliest possible time. In the absence of specific Secretarial authorization in an individual case, the JAG shall not request the Office of the Federal Register to publish any document that cannot be published by a particular date required by law or regulation. In such a case, the originator will be notified promptly and advised on possible means of avoiding a violation of the applicable law or regulation.

c. E-Rulemaking and Comments Submitted Electronically

(1) Federal Register notices will include in the preamble to any regulatory action requesting public comment a specific reference directing the public to the Federal E-Rulemaking portal: <http://www.regulations.gov> (Regulations.gov). Regulations.gov is a cross-agency E-Government effort authorized by section 206 of the E-Government Act of 2002, P.L. 107-347, 116 Stat. 2915.

(2) Comments can be submitted electronically to the Government-wide centralized docket management system. This system will contain such regulatory material as Federal Register notices and rules, supporting analyses, and comments submitted by the public. Comments sent by mail will be submitted to an address provided by the JAG (Code 13) so the comments may be entered into the docket management system. The public and the component responsible for rulemaking action can view comments submitted for consideration from Regulations.gov.

d. Component Representatives. Each DON activity having cognizance of the subject matter of documents currently published in the Federal Register, or required to be so published, including organizational and functional descriptions contained in the United States Government Manual, should designate an officer to represent the component as a primary point-of-contact for the JAG in matters relating to the publication of documents in the Federal Register.

7. Annual Verification of Code of Federal Regulations and United States Government Manual. DON components having cognizance of directives that are presently codified in the Code of Federal Regulations shall review and update the directives if necessary, pursuant to reference (e). The JAG shall annually request the heads of the cognizant components to verify that the Code of Federal Regulations accurately reflects the current directives upon which it is based. Additionally, the JAG shall annually request components to verify the organizational and functional descriptions contained in the United States Government Manual. To the extent possible, updating of the Code of Federal Regulations and the United States Government Manual will be accomplished before the scheduled revision dates each year.

J. E. MCPHERSON
Judge Advocate General

Distribution:

Electronic only, via Navy Directives Website
<http://neds.daps.dla.mil//>